IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3062 OF 2004

Arun Jadhav & Ors. .. Petitioners

V/s

Municipal Corporation of Greater Mumbai & Ors. .. Respondents

Mr.Atul Rajadhyaksha with Mr.V.S. Lonkar for the Petitioners.

Mr.D.H. Mehta with Ms.A.K. Savla for Respondents Nos.1 and 2.

Mr.Y.S. Jahagirdar, Senior Counsel, with Mr.S.A. Sawant for Respondent No.3.

Mr.N.V. Walavalkar with Mr.Kode for Respondent No.4.

Mr.D.G. Ghate for Respondent No.5.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE : 9TH FEBRUARY 2005

P.C. :

1. Heard the learned counsel for the parties.

2. The Petitioners are two of the occupants of a municipal property known as "Gora Gandhi Chawls" (Kranti Nagar) situated at Tardeo, Mumbai. By this petition, they seek to challenge the decision of the Joint Municipal Commissioner dated 11th August 2004 and the communication dated 12th July 2004 which contained the following conditions to revalidate the Letter of Intent

issued to Respondent No.3 Developer to develop this property:-

1. You will pay 9% capitalized value of Rs.1,39,26,787/- with 15% interest p.a. from the date of payment of 1% capitalized value i.e. from 28.8.2001.

2. You will pay electric bill charges of Kranti Nagar redevelopment scheme and produce certificate from BEST that the said charges have been paid.

3. You will arrange to construct the transit camp after the appeals pending in City Civil Court are disposed off.

4. You will make the payment of Rs.74,34,498/- towards interest on capitalized value for redevelopment scheme of Janata Nagar.

It is necessary to note that this Respondent No.3 was earlier issued a Letter of Intent to develop this property on 13th April 2000 and since the property was not being developed diligently at that time, a petition was filed earlier by these very Petitioners being Writ Petition

(Lodging) No.10 of 2004. That petition sought a mandamus that another proposal given by a developer to develop that very property be considered. The said petition along with Writ Petition No.2921 of 2003 filed by Respondent No.4 herein came to be heard and decided by a Division Bench of this Court on 3rd March 2004. One of us (S.C. Dharmadhikari, J.) was a party to that decision. After hearing all concerned, the Division Bench came to the conclusion that the Municipal Commissioner ought to decide the question as to whether the Letter of Intent should be revalidated or whether the development should be entrusted to some other developer. It is material to note that at that point of time, an amount of Rs.1,75,00,000/- being 10% of the capitalised value and arrears of electricity bills of the residents was to be paid. The Respondent No.3 herein, who had Letter of Intent issued to him earlier and who had not taken the necessary steps, made a statement to the Court and which the Court recorded in its order that he will deposit this amount in this Court. Mr.Jahagirdar for this Developer informs that this amount has been deposited in the Court and therefrom the amounts, which were to be paid to BEST as also the Municipal Corporation, have been transferred to them. This is recorded in the order dated 21st July 2004 passed by another Division Bench in Notice of Motion No.371 of 2004 taken out in Writ Petition No.2921 of 2003.

3. It so transpired that thereafter the Joint Municipal Commissioner has arrived at the above decision to revalidate the Letter of Intent issued earlier. It is this order which is under challenge in the present petition.

4. Mr.Rajadhyaksha, learned counsel for the Petitioners, raised various submissions with respect to this development scheme on behalf of the Petitioners who are some of the occupants in this property. This property is owned by the Municipal Corporation and the earlier Division Bench in para 6 of its order has already taken a decision that it is for the Municipal Corporation to take the decision as to whether there should be reconstruction and in which manner it should be carried out. The Municipal Corporation, which is the owner of the property and looks after its management, is undoubtedly desirous that this property ought to be developed and since all these chawls have become dilapidated over the years, the decision to develop it through a developer has been taken under the relevant Regulations, i.e. Regulation 33(7) of the Development Control Rules, framed under the Maharashtra Regional and Town Planning Act. Under these Regulations, 225 sq.ft. is the minimum area to be provided for each tenement when the reconstruction takes

place. In the present case, it is nobody's case that anybody is having an area in excess of 225 sq.ft. in their occupation. This being so, all that is expected of the Corporation is to see to it that the reconstructed scheme provides tenements to all the existing tenants/occupants of at least 225 sq.ft. Mr.Rajadhyaksha tried to submit that the other developer was inclined to give 300 sq.ft. carpet area. That is a matter for the Corporation to examine and decide. Inasmuch as none of the occupants was having area in excess of 225 sq.ft., they had no right to claim any area over and over 225 sq.ft. The proposed scheme undoubtedly provides for 225 sq.ft. carpet area to all the occupants in the reconstructed buildings. Mr.Jahagirdar informs that apart from this area of 225 sq.ft., all those tenements on the first floor and above will get a balcony of 25 sq.ft. The scheme is approved by more than 70% of the tenants. This being the position, we cannot entertain the submission that because somebody is ready to give 300 sq.ft. carpet area, the present scheme ought to be rejected.

5. Certain conditions have been imposed in the order revalidating the Letter of Intent. The developer will have to comply with those conditions. At one time, a question was also raised as to whether the arrears in respect of electricity bills have been cleared. As far as

that aspect is concerned, Mr.Jahagirdar has tendered No Due Certificate from BEST Undertaking which also shows that no such arrears are remaining to be cleared. It must, however, be noted that this payment was made due to the order passed by the earlier Division Bench in the interest of the occupants.

6. An affidavit has been tendered by one Shri Deepak Kasbe, Administrative Officer of the Municipal Corporation affirmed on 7th February 2005, and in para 2 thereof he has stated that whatever payment is due and payable by Respondent No.3 as per the Letter of Intent in respect of redevelopment scheme shall be recovered from Respondent No.3 before issuance of occupation certificate for the sale buildings. That takes care of the various financial obligations which are imposed in the revalidated Letter of Intent. That also protects the interest of the present occupants of the tenements inasmuch as the sale component is not to be constructed until the buildings for rehabilitation are completed and necessary payments are cleared.

7. One of the questions raised was with respect to monthly outgoings and the property taxes which will be required to be paid by the occupants. This was essentially because most of the occupants are belonging to

lower income group and it should not happen that though they shift to the newly constructed tenements (which will be given to them free of cost), the monthly outgoings will become excessive.

8. The Respondents Nos.1 and 2 have filed another affidavit of one Shri Sakharam Aba Bamane, Assistant Assessor and Collector of the Municipal Corporation. He has stated therein that there is a governing circular dated 8th July 1997 issued by the Municipal Corporation which permits the Corporation to assess the redevelopment proposals under Regulation 33(7) of the D.C. Regulations by adopting 25% of the market value prevailing as against the normal rates. However, Mr.Jahagirdar for Respondent No.3 Developer has pointed out that a meeting was held of various senior officers of the Municipal Corporation including the Municipal Commissioner and the then Assessor and Collector on one hand and the representatives of the Property Developers Association on 25th September 2002. Minutes were drawn in that meeting and it was decided that the Municipal Corporation will take up with the State Government either to amend the relevant Section 144-B of the Bombay Municipal or to have a further beneficial section added. Mr.Mehta, learned counsel for Respondents Nos.1 and 2, has pointed out that the Commissioner has already moved to add Section 144-BB into the Bombay

Municipal Corporation Act to govern such properties. In any case, in that meeting, the opinion of the Municipal Commissioner has been recorded that for the time being the Corporation can make lesser assessment. A statement of A.M.C. (P) is also recorded in that meeting that provisional bills can be sent for 20% assessment payable only for the rehabilitated building until the decision is taken in respect of the amendment of Section 144-B. In this affidavit of Mr.Bamane, it is ultimately stated in para 4 that the Hon'ble Court may pass appropriate orders. In the circumstances, as far as this property is concerned, we direct the Municipal Corporation that it will follow these minutes drawn on 25th September 2002 until such decision to amend the statute is arrived at.

9. Mr.Rajadhyaksha raised certain questions with respect to the open space to be kept around the building that it should be as per the D.C. Regulations. He submitted that in the plan prepared by the Developer, adequate recreational area has not been provided. There are certain marginal concessions as far as Building No.3 is concerned and which is admitted in the affidavit of one Shri Niranjan Khanolkar, Assistant Engineer (Building Proposal) of the Municipal Corporation. It is stated in para 2 of this affidavit that this concession was granted by the Director (E.S. & P.) before the decision of a

Division Bench of this Court, to which one of us (H.L. Gokhale, J.) was a party in Writ Petition No.379 of 2003 and other petitions reported in 2004 (4) BCR 1. However, in view of the suggestions emerging in the Court, an affidavit has been filed by one Shri Kaushik Shah, partner of Respondent No.3 Developer, and he has annexed a plan at Exhibit-1 to this affidavit. At one point of time, in the earlier plan, the space between Building No.1 and the outer wall was too inadequate. Sufficient care is now taken in the modified plan. The proposed plan will be subject to the approval of the appropriate municipal officers. Now, recreational area is provided and also a welfare centre on one side of rehabilitation Building No.2. These calculations show that the open space now made available will be 26.86%. We would like to emphasise on the developer as well as on the officers of the Municipal Corporation that although these rehabilitation buildings are meant for the weaker sections of the society, the Development Control Regulations are one and the same for all persons whether they are rich or poor. The officers of the Corporation must see to it that the Regulations in that behalf are adhered to. In the present case, now that necessary amendments are made, we find that appropriate open space as also adequate space on all sides of the rehabilitation buildings is being provided.

10. In our view, the affidavits filed by the Municipal Corporation as well as those filed by Respondent No.3 Developer take care of various objections which have been raised by the Petitioners as well as Mr.Rajadhyaksha. We were pointed out that reconstruction of Building No.3 has already started and it has come upto the plinth level and some 110 piles have already been laid.

11. On this background, in our view, there is no reason for this Court to interfere into the Letter of Intent which has been revalidated by the Municipal Corporation. The petition, therefore, is not being entertained and stands disposed of with this order.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)